

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 3-06cv2322-N

BLANCA VALENZUELA, MARGIE SALAZAR, JOSE A. SERRATO,
JOSIE RENDON, CLARA TOVAR, CONSUELO ESPINO, MARIA
AVILA, ERNESTINA NAVARRETTE, MARIA E. MUNOZ, AMANDA
SALCIDO, CANDELARIO G. ORTEGA, MARIA ORTIZ, JOSE
OLIVA, RAFAELA CHAVEZ, ELODIA ARROYO, SUSANA CARDIEL,
GRACIE RIOS and LEONEL RUIZ, individually and on
behalf of all others similarly situated,
Plaintiffs,
v.

SWIFT BEEF COMPANY, INC., d/b/a SWIFT COMPANY, SWIFT &
COMPANY, HICKS, MUSE, TATE & FURST, INC., HM CAPITAL
PARTNERS OF DALLAS, LLC and JOHN DOES I-V,
Defendants.

DEPOSITION OF: DOUGLAS W. SCHULT - April 8, 2008

PURSUANT TO AGREEMENT, the deposition of
DOUGLAS W. SCHULT was taken on behalf of the Plaintiffs at
1770 Promontory Circle, Greeley, Colorado 80634, on
April 8, 2008, at 9:05 a.m., before Barbara Birger,
Registered Merit Reporter, Certified Realtime Reporter and
Notary Public within Colorado.

A P P E A R A N C E S

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5 For the Defendant: ROBERT E. YOULE, ESQ.
6 Swift Beef Sherman & Howard
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I N D E X

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April 8, 2008

By Mr. Pearson 6

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2 et al. vs. Swift Beef Company, Inc., et al.

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1 WHEREUPON, the following proceedings were taken
2 pursuant to the Federal Rules of Civil Procedure.

3 * * * * *

4 MR. PEARSON: This is Eric Pearson,
5 counsel for the plaintiffs, and I've been informed by
6 counsel for the defendants that they are objecting to
7 the presence of a videographer because we did not
8 notice these as video depositions.

9 It's our position that these depositions
10 were taken by agreement without the necessity of any
11 notice whatsoever, and that it's improper to insist
12 that a notice of a video deposition was necessary when
13 these were taken by agreement and no notice of any
14 kind was sent and no insistence was made that a notice
15 had to be sent.

16 But in order to move forward with the
17 depositions, I've instructed the videographer pack up
18 her things, and we will take these stenographically
19 without a videotape. That's it.

20 MR. YOULE: That's fine.

21 DOUGLAS W. SCHULT,
22 having been first duly sworn to state the whole truth,
23 testified as follows:

24

25

EXAMINATION

BY MR. PEARSON:

Q. Would you state your full name for the record.

A. Douglas W. Schult.

Q. My name is Eric Pearson, I represent the plaintiffs in this case, and we're here taking your deposition today.

Have you had your deposition taken before?

A. Yes, I have.

Q. So you generally know the ground rules and procedures that are followed in a deposition?

A. Yes.

Q. Obviously the court reporter to your left is taking down everything that you and I say. In order to make her job easier, I need to ask you to answer out loud to all my questions and avoid using phrases like uh-uh or uh-huh. If you would do that for me, I would appreciate that. Can we agree on it?

A. Okay.

Q. If you don't understand my question, will you tell me and I'll try to rephrase.

A. I will.

Q. If you need a break, I'll be happy to

accommodate.

2 A. Okay.

3 Q. Your written deposition testimony will be
4 printed up in a booklet form, and you'll have an
5 opportunity to review that and make any corrections to
6 ensure that it's accurate; do you understand that?

7 A. Yes.

8 Q. And you understand that the testimony
9 you're giving here today has the same force and effect
10 as if you were testifying in front of a judge and
11 jury; do you understand that?

12 A. Yes.

13 Q. Who is your current employer, Mr. Schult?

14 A. JBS Swift & Company.

15 Q. And is that a Brazilian company?

16 A. The parent is owned -- is the
17 Brazilian-based company.

18 Q. That's JBS?

19 A. Yes. I don't know the exact title of the
20 company, but it's JBS.

21 Q. How long have you been with JBS Swift in
22 one form or another?

23 A. Since June of 2000.

24 Q. And what position did you start at in
25 June of 2000?

A. Basically the same position I'm in today.

It's titled differently. Back at that point it was vice-president of field operations for human resources.

Q. And as of today, who's your direct superior?

A. Jack Shandley.

Q. What is his title?

A. Senior vice-president of HR, human resources and administration.

Q. And how many people, if any, report directly to you?

A. Right now I have, let's see, three direct reports, and then several indirect reports.

Q. Who are the direct reports?

A. James Hamilton.

Q. Okay.

A. And Ruben Flores.

Q. Is there one other? I thought you said three.

A. Just the two.

Q. What is Mr. Hamilton's position?

A. He heads up our compliance for human resources.

Q. What about Ruben Flores?

A. He heads up our college recruiting and relations, as well as he just recently took over the corporate staffing function and handles some community relations activities.

Q. Mr. Hamilton and Mr. Flores, do they office here in this building?

A. Yes.

Q. And who does Mr. Shandley report to?

A. Wesley Bastista, CEO.

Q. Mr. Shandley, does he office in this building?

A. Yes.

Q. And where does Mr. Bastista office?

A. This building.

Q. I'm going to ask you to turn to Exhibit 13, which is a series of letters discussing the topics on which we were seeking a corporate representative to testify. And if you look, I just want to walk through and verify the ones I believe you've been designated on based on communications from your lawyer and make sure we're on the same page here.

If you turn to the second page of Exhibit 13, looking at topics 4, 5, and 6, are those topics on which you have been designated to testify as a corporate representative of Swift in this

1 litigation?

2 MR. YOULE: Objection to form for lack of
3 foundation. You can answer.

4 A. Yes.

5 Q. (BY MR. PEARSON) And what about topic
6 No. 9?

7 MR. YOULE: Same objection. You can
8 answer.

9 A. Yes.

10 Q. (BY MR. PEARSON) And the next page,
11 topics 12 through 15, are those topics on which you
12 have been designated to testify as a corporate
13 representative of Swift in this litigation?

14 MR. YOULE: Same objection, you can
15 answer. 12 through?

16 MR. PEARSON: 15.

17 A. Yes.

18 Q. (BY MR. PEARSON) And lastly, topic
19 No. 21, same question?

20 A. Yes.

21 Q. Which of the production -- are all of
22 Swift's production facilities, other than the Hyrum,
23 Utah, facility, unionized?

24 A. The production facilities, yes. We have
25 some distribution centers, relatively small -- I'm

1 trying to think offhand -- one in Grand Island. The
2 Denver SDC -- Swift distribution center.

3 Q. The processing facility is in Grand
4 Island?

5 A. That's correct.

6 Q. Is the primary union at all the
7 production facilities that have a union the United
8 Food and Commercial Workers Union?

9 A. That's the primary one, not the only
10 one.

11 Q. Are the majority of the employees at
12 those unionized processing plants members of that
13 particular union?

14 A. They are represented by that particular
15 union. I don't know what the membership is, the more
16 technical term.

17 Q. Very well. And is it true that you
18 personally have been involved in negotiating every
19 labor agreement involving those Swift production
20 facilities since the year 2000?

21 A. That's correct.

22 Q. In what capacity have you been involved
23 in negotiating those labor agreements?

24 A. Various capacities. I've taken the lead
25 in coordinating the internal development of the

1 internal strategy and so forth within the
2 organization. Depending upon the contract, I may or
3 may not be the chief spokesperson at the table.

4 Q. In the various capacities in which you
5 have acted in negotiating labor agreements for the
6 Swift production facilities, you have been acting on
7 behalf of Swift corporate; is that correct?

8 MR. YOULE: Objection to form. What do
9 you mean when you say "Swift corporate"?

10 Q. (BY MR. PEARSON) The interests of the
11 company overall as opposed to the interests of a
12 particular plant?

13 A. I guess I'm not sure how to answer your
14 question. There's interest, obviously, to the company
15 overall, but there's local interest as well, local
16 issues that would be more important to the plant than
17 to necessarily corporate.

18 Q. And as between the interests of the plant
19 and the interests of corporate, which of those
20 interests are you representing?

21 A. Both.

22 Q. And if there's a conflict between those
23 interests, which are you representing?

24 A. I'll resolve the conflict internally
25 through the corporation.

1 Q. And how is that done?

2 A. I'll take it back through the senior
3 management team.

4 Q. Who is on that senior management team?

5 A. It can start anywhere from the CEO to the
6 CFO to the COO. It's going to depend upon what the
7 issue is and which contract it is.

8 Q. I want to walk through just sort of the
9 process from beginning to end in general terms, then
10 we'll go back in and talk more specifically. Let's
11 say hypothetically a contract -- let me back up for a
12 minute.

13 Explain what a collective bargaining
14 agreement is, if you would.

15 A. It's an agreement -- it's a formal
16 agreement reached between labor and management that
17 dictate the hour -- or wages, hours, and working
18 conditions for the employees who are represented by
19 that union.

20 Q. And are the collective bargaining
21 agreements, which I'll call CBAs, are those plant
22 specific or union-wide or are there both sometimes?

23 A. What do you mean "union-wide"?

24 Q. Well, is there one CBA for each plant?

25 A. Yes.

1 Q. Are there any agreements between Swift
2 and the United Food and Commercial Workers Union that
3 apply to more than one Swift facility?

4 A. No.

5 Q. And let's kind of walk through how the
6 process works. Let's say hypothetically the contract
7 under which the Cactus facility is operating is
8 expiring. First of all, let me ask you: How far in
9 advance of the expiration of an ongoing CBA does Swift
10 normally start the process of negotiating a new CBA?

11 A. Oh, internally we'll start, say, ten
12 weeks in front. Typically as far as actual meeting at
13 the table with the union and company representatives
14 at the formal table negotiations, probably six to
15 seven weeks before expiration.

16 Q. Let's start with what happens ten weeks
17 before when you start the process internally. What
18 does that entail?

19 A. What we do is we'll get with the plant
20 management team, ask them to begin the process of
21 reviewing what changes they would like to see in the
22 collective bargaining agreements, whether it's
23 language, changes, and so forth. They will focus
24 primarily on language, and then any local issues that
25 have come up over the last collective bargaining

1 agreement. We will then in turn at a corporate level
2 begin to do the same thing, but also look at the
3 economics.

4 Q. When you say "look at the economics," can
5 you describe what that means?

6 A. Look at the wage rates, look at the
7 benefits, and do comparisons on those wages and
8 benefits.

9 Q. Comparisons between what and what?

10 A. It's going to depend upon which contract
11 it is. If it's a beef contract, we'll look at our
12 beef plants, but we'll also look heavily at the
13 industry and review what recent settlements have been
14 made in the beef industry. So we're looking probably
15 at the industry overall at that point and comparing
16 wage rates and then again, as I said, looking at
17 recent settlements in unionized facilities.

18 Q. And that term "settlements," that
19 obviously has a different meaning than in a legal
20 context. Can you explain what that means by "recent
21 settlements"?

22 A. Well, contracts that have been negotiated
23 and ratified by our competitors and different labor
24 unions. And the settlements being, what did they
25 settle for? What wage rates? What was the terms?

1 What, if any, benefit changes occurred inside that
2 agreement?

3 Q. Is Oscar Arriaga corporate, or is he at
4 one of the plants?

5 A. He's at the Cactus plant.

6 Q. And Eric Ray?

7 A. Eric was -- he's been at three plants for
8 us, so he's still out at a plant location, currently
9 in Greeley, Colorado.

10 Q. So who at the plant -- you mentioned
11 earlier about the internal discussions as part of the
12 collective bargaining process that you get together
13 with the plant management team. What positions
14 normally would be involved in that from the plant?

15 A. The primary ones are going to be the
16 general manager, the HR director, some limited
17 involvement from the controller. We may ask them to
18 get involved in helping us cost some issues out. And
19 then the operations managers of the facility, the
20 local people will get feedback from them on, again,
21 issues or items that they would like to see changed in
22 the labor agreement.

23 Q. We're going to look at it here in a
24 moment, but in one of the documents that's been
25 produced it mentioned someone with the title benefits

1 as being involved in these discussions as well. Is
2 that normally someone from corporate or at one of the
3 plants?

4 A. It would be corporate.

5 Q. And what is their function?

6 A. On the benefits side it's going to be --
7 when I refer to benefits, it's going to be health
8 care. They will get involved in making
9 recommendations as to what the plan design should look
10 like, what contributions for health care should look
11 like. There is another side to benefits, and that's
12 on the retirement plans, but that's rarely -- I mean,
13 it's not something that changes very often contract to
14 contract.

15 Q. And in these internal discussions that go
16 on before the collective bargaining process begins, is
17 it corporate that's normally dictating the economic
18 terms of the proposed agreement with the particular
19 plant?

20 MR. YOULE: Objection to form. Go ahead
21 and answer if you understand the question.

22 A. Corporate will approve -- corporate is
23 going to drive the primary wage -- the primary
24 direction on wages and on the major benefits. They
25 will approve all of the economics. On a local level

there are some minor economic issues, or what I would consider more minor, that the general manager and his operations team has some latitude over. But in the grand scheme of costing out a labor agreement, that's going to be a fairly minor piece of it.

Q. (BY MR. PEARSON) And when you say that there's some minor economic issues that the local plant managers may have some more input on, what types of issues would those be?

A. Just a couple of examples, premium pay for certain jobs where we pay additional amounts over our base rates for certain jobs, they may want to upgrade a job, so the economics of that. They may make a decision to provide certain equipment to certain jobs. That's not something that necessarily corporate is going to get involved in, that's a local decision.

Q. But as far as setting the wage rates, that is a decision that's driven by corporate; is that correct?

A. Correct.

Q. Now these internal discussions that occur that you start about ten weeks before the CBA is expiring, how are they -- do they result in any kind of a plan or a written proposal, or what is the

1 outcome of those internal meetings?

2 A. What I've done -- and I'm trying to think
3 how far this goes back -- but I think almost all the
4 way back to the first contract since I've been here is
5 we'll do the background, the benchmarking, the
6 costing, and put together a formal recommendation for
7 senior management to look at and to ultimately
8 approve, and that is a written document.

9 Q. And who in senior management would have
10 the final approval on that?

11 A. Again, it's going to depend upon which
12 contract it is specifically, if it's a beef contract
13 or a pork contract. And it's going to depend upon
14 what time frame we're talking about because people in
15 the organization changed over that time frame.

16 Q. Let's assume it's beef. And rather than
17 go in with names, give me just titles or positions of
18 the people that would be involved in that approval
19 process.

20 A. Okay. Let me go back to prior to JBS
21 because, frankly, right now we haven't had a major one
22 come up since JBS has been involved. But prior to
23 that it would be the COO and the senior vice-president
24 of human resources administration, the vice-president
25 of operations. That's really those three.

Q. And how often do those folks get

involved -- I mean, is it typical that they would look at that proposal and say, Look, we're not happy with those wage rates, we need to discuss them or is it a rubber stamp or how does that normally play out?

A. Again, it's going to depend upon the contract and what the circumstances were, what the proposal was. It's not a rubber stamp. There's give and take. We're talking not just economics, we're talking strategy, we're talking length of contract. And so depending upon which contract it was, it could have sent us back and said, We need to do more work on the benefits, we need more information on wages or any number of things.

Q. Going back to the corporate level and these discussions internally on the wage rates, who at the corporate level would be involved specifically in talking about hourly wage rates in these collective bargaining agreements?

A. Well, myself and those four -- those three individuals. At one time there was another individual that was involved -- more involved than what we would do today, and he worked on my staff.

Q. Who was that?

A. Tony Harris.

1 Q. Then when you said in those three
2 individuals, you were talking about the COO, the
3 senior VP for HR and admin, and vice-president of
4 operations?

5 A. Correct.

6 Q. Would those three folks be involved in
7 the initial discussions that result in any proposal,
8 or would they just become involved after you had come
9 up with the proposed wage rates and they would look at
10 it and pass judgment on it?

11 A. My approach was to put a straw man, if
12 you will, put a proposal in front of them and then
13 we'll beat it up from there.

14 Q. When was Mr. Harris involved? During
15 what time frame?

16 A. I'll get close, but -- I'll get close,
17 but I'm not sure exactly.

18 Q. The best you can.

19 A. Late 2000 to 2006.

20 Q. And what was his title?

21 A. Regional director of human resources.

22 Q. Why did his involvement cease? Did he
23 leave the company or change positions?

24 A. Changed positions.

25 Q. Has he been replaced in that capacity?

1 A. We eliminated the position.

2 Q. So during the time frame from 2000 to
3 2006 when wage rates were being determined within
4 Swift corporate, it was you and Tony Harris that were
5 responsible for making a proposal to senior
6 management, which would be the COO, the senior
7 vice-president for human resources and administration,
8 and the vice-president for operations; is that
9 accurate?

10 MR. YOULE: Objection to form. We're
11 talking generally here as opposed to a particular
12 contract, I assume?

13 MR. PEARSON: I think the question just
14 speaks for itself.

15 MR. YOULE: Objection to form.

16 Q. (BY MR. PEARSON) Is that the process
17 that went on for all the contracts, or did some of
18 them deviate from that process?

19 A. There may have been some deviation to
20 that. That would be the standard -- the more typical
21 process it would go through.

22 Q. Can you think of any examples?

23 A. I would have to go back through each one
24 of the contracts and think about it.

25 Q. Is there any reason why one contract

1 would deviate from that where somebody other than you
2 or Mr. Harris would be looking at the wage rates and
3 making those decisions?

4 A. Not as far as gathering the background
5 information on the wage rates and things like that.
6 It would have been Tony or myself. There may have
7 been one other individual, his name is Tim Hill, and
8 he also had the title of regional director of HR, and
9 Tim may have been involved in one or two contracts as
10 far as gathering the background data.

11 Q. Now obviously, as you just mentioned, one
12 part of that process in determining the wage rates
13 that you would then send to senior management to look
14 at would be gathering background data, right? That's
15 what you just testified to?

16 A. Yes.

17 Q. Then after that data was gathered who, as
18 between you, Mr. Harris, and Mr. Hill, if he was
19 involved, who would determine, based on this data,
20 here is what we're proposing for the wage rates of
21 this particular plan? Would that be you?

22 A. As far as what would go into the final
23 proposal to senior management?

24 Q. Yes, sir.

25 A. Yes, that would be me.

1 Q. The other folks, Tony Harris and then
2 maybe Tim Hill on a few occasions, they were simply
3 gathering the background information for you to look
4 at and then make a determination as to what you
5 thought the appropriate wage rates were to go into the
6 proposal to senior management?

7 A. We would work together on it and develop
8 proposals together, but ultimately I was the one that
9 made the decision as to what went in and what didn't
10 to senior management.

11 Q. Now you mentioned when I asked earlier
12 about the process, you said maybe ten weeks before the
13 CBA was expiring you would meet internally, and then
14 maybe six to seven weeks before it was expiring you
15 would meet at the table. I want to talk now about
16 that process at the table. First of all, what does
17 that phrase mean to you?

18 A. To me that's the formal negotiations with
19 the union, the company's committee, and the union's
20 bargaining committee. It is the formal face-to-face
21 negotiation of the collective bargaining agreement.

22 Q. Does that normally take place in the
23 local city where the plant is or does it take place
24 here in Greeley or how does that work?

25 A. It's just going to be in the local city

1 or some town close to that. It won't be here in
2 Greeley unless it's the Greeley contract.

3 Q. And what goes on? Just describe for me
4 in general terms that process at the table, how that
5 works?

6 A. You start out with noneconomic issues, at
7 least that's the company's approach. Sometimes the
8 union will give a full proposal, and by that I mean
9 economics and noneconomic items. The company -- our
10 process is to only give noneconomic proposals to start
11 with.

12 Typically the first day is relatively
13 short, it's an exchange of written proposals. After
14 the first day you begin to take each proposal, company
15 and union, and work through them. Work through all
16 the noneconomics first, and then maybe some
17 noneconomics get carried over into the economic
18 issues, but then focus on the economic issues.

19 There are minutes taken by each side, not
20 people from the outside, they are part of the
21 committees -- various committees. Sometimes we'll
22 break down into subcommittees, if there is a
23 particular issue that's going to take too much time at
24 the main table with the full bargaining committees,
25 and ask them to address items away from the table and

1 then bring it back to the table.

2 You go through sessions where you're at
3 the table negotiating face-to-face. You have caucus
4 sessions where you go back and discuss amongst
5 yourselves the dialogue that occurred at the table and
6 what we're going to talk about at the next session
7 when we go in, and it just goes back and forth like
8 that until you reach agreement.

9 Q. And so there's two groups, a company
10 group and then a union representative group; is that
11 right?

12 A. That's right.

13 Q. Let's go ahead and look at -- let me
14 offer Exhibit 3. Actually, let me back up to
15 Exhibit 1, if we could, which are some interrogatory
16 numbers in this lawsuit. If you look at interrogatory
17 No. 7 on page 10. The interrogatory was, "For every
18 one of the labor contracts, please identify the name
19 of each individual who participated in the
20 negotiations for such on behalf of management and
21 briefly describe the role they played."

22 And the answer is, "Individuals who
23 participated on behalf of Swift in the negotiations of
24 the labor contracts are set forth on the attached
25 Exhibit F, which has been supplemented from its

1 previous disclosure."

2 Did I read that portion of that
3 correctly?

4 A. Yes.

5 Q. If you'll turn to Exhibit 3 where we were
6 a minute ago, it's labeled Supplemental Exhibit F,
7 paren, Supplemental Answer to Interrogatory No. 7. I
8 just want to verify, is this a chart of the people
9 involved on behalf of Swift in the negotiation of the
10 various collective bargaining agreements with the
11 production facilities?

12 A. Yeah, as best we could put it together.

13 Q. So, for example, looking at the first
14 page at the Cactus plant, the December 2005 to
15 December 2010 contract, that shows you and Mr. Harris
16 involved, and it lists your position as labor
17 relations, correct?

18 A. Our function at the table is labor
19 relations, yeah. The column is titled Position, but
20 we were saying this is the role they play because I
21 think that was the question in the interrogatory.

22 Q. And what do you mean by that term, the
23 role we played was labor relations? What does that
24 mean in general terms?

25 A. Our role was to take the lead in the

1 contract negotiations and deal directly with the
2 union.

3 Q. And in those at-the-table negotiations,
4 who normally takes the lead? Let's say from among
5 this group here in the 2005 to 2010 contract, who
6 would take the lead on behalf of Swift in negotiating
7 that particular CBA?

8 A. At the table it would either be Tony or
9 myself, depending upon the agreement.

10 Q. Do you remember on that particular
11 agreement who it was?

12 A. It was split. Tony took the lead to
13 start with, and then he got sick, and so I had to come
14 in and finish it up.

15 Q. Was it typical that in the negotiations
16 of these various collective bargaining agreements that
17 someone with the position title here of labor
18 relations would be the one taking the lead at the
19 table?

20 A. Yes, he would be the chief spokesperson.

21 Q. And when the issue of wages came up,
22 assuming it did at the table negotiations, who would
23 be the point person from Swift on those wage issues?

24 MR. YOULE: Are you talking about this
25 particular contract, or more generally?

1 MR. PEARSON: More generally.

2 A. The labor relations lead.

3 Q. (BY MR. PEARSON) Would there be anybody
4 else who would have input on wages at these
5 at-the-table negotiations from the Swift side other
6 than the person with the position on Exhibit 3 listed
7 as labor relations?

8 A. To some degree the general manager.

9 Q. And when you say "to some degree," kind
10 of give me a feel for what that is.

11 A. The ultimate decision of what was going
12 to be paid or not paid was going to be made by senior
13 management, not the people sitting at the table.

14 Q. But from among the people sitting at the
15 table, who had the ultimate authority?

16 A. The chief spokesperson, labor, based on
17 what senior management approved.

18 Q. So let's look at another one of these.
19 Let's look at the 2001 to 2005 Cactus contract. At
20 the table would you have been the person who had the
21 ultimate authority on wages?

22 A. Yes.

23 Q. And now when you say with the approval of
24 management, I want to make sure I understand that.
25 Was it a situation where you would go into these

1 negotiations with a certain range that had been
2 approved by management, or would you actually have to
3 consult with senior management during the negotiation
4 process to get approval?

5 A. We would go in with a range that had been
6 preapproved, and that would include more than just the
7 money, it would include the term and things like that.
8 Probably in 80 to 90 percent of the cases there would
9 be dialogue with senior management towards the end on
10 the final settlement.

11 Q. And would that normally just be done over
12 the phone or would you have to come back for a meeting
13 or how would that work?

14 A. Both.

15 Q. Would there be a -- was there a formal
16 approval process, any kind of documents that were
17 checked off on by senior management, or was it verbal?

18 A. Verbal.

19 Q. Were any notes or minutes of those
20 meetings taken?

21 A. No.

22 Q. How often was it that you had to get
23 authorization from senior management to deviate from
24 the preapproved range you had been given? Was that
25 typical or atypical that would happen?

1 A. I would say it's fairly typical.

2 Q. And let's look at one of these -- well,
3 in general terms, this Exhibit 3 talks about who was
4 at the table from Swift. Not giving me names but
5 positions, let's say with the Cactus contract 2005 to
6 2010, who would be at the table for the union? Again
7 not names but positions.

8 A. In Cactus' case, the president of the
9 local would be present, not at all the sessions. I
10 would say 25 percent of the time. When he was
11 present, he would be the chief spokesperson. When he
12 wasn't, it would be handed off to the business
13 representative that serviced the plant -- Cactus plant
14 for that local. They would also have what is called a
15 walking steward would be part of the committee.

16 Q. Walking steward?

17 A. Yes. It's a full-time steward.

18 Q. Tell me what that term -- I know what
19 that term means in a restaurant.

20 A. They walk around the plant, that's how
21 they get the terminology. Literally, they walk around
22 the plant, so they call it a walking steward.

23 Q. But they are a union employee rather than
24 a Swift employee?

25 A. They are a union-appointed employee

1 that's paid for by the company as part of the
2 collective bargaining agreement.

3 Q. Who else would be involved, if any?

4 A. They would have bargaining
5 representatives from the plant. They go through a
6 nomination and an election process, and depending upon
7 the local, it will dictate how many other committee
8 members there are. In some cases there will be a
9 representative from the international union present.
10 I would say probably two-thirds of the time there is
11 an international representative present at the table
12 for some portion of the negotiation.

13 Q. And from your interaction and
14 communications with the various union participants at
15 these at-the-table sessions, do you have an
16 understanding as to whether the international union
17 gives some type of preapproval similar to the way that
18 the senior management at Swift gives to you prior to
19 the time they arrive at the table?

20 A. No.

21 Q. You know that doesn't happen, or you
22 don't know either way or . . .

23 A. I don't know that that happens.

24 Q. You don't know one way or the other?

25 A. I know that the international has

1 dialogue with the local unions on these major
2 contracts. I don't know to what extent that dialogue
3 occurs or to what extent they set preapproved limits
4 with them.

5 Q. So you've never had somebody from the
6 local say, hey, I'm going to have to go to the
7 international or that, or . . .

8 A. Sure, on certain issues.

9 Q. What types of issues?

10 A. Contract term as far as the length of the
11 contract. Let me think. It could be a safety issue,
12 something to deal with a safety committee. It could
13 be a language issue.

14 An example was we were negotiating the
15 language on nondiscrimination and language that
16 referenced that if an employee filed a grievance and
17 that grievance was still pending and then turned
18 around and filed a grievance with an agency as in the
19 EEOC or state agency or something like that, that the
20 grievance would be withdrawn without precedent. That
21 is an example of language that they said had to go to
22 the international because they were concerned about
23 the impact that language would have not only in that
24 contract but all the contracts around the country.

25 Q. From your interaction with the union

1 representatives at the table and these negotiations,
2 did you have a sense for who was involved from the
3 union side in determining wage rates at a particular
4 plant?

5 MR. YOULE: Objection to form. Are we on
6 Cactus or general?

7 MR. PEARSON: General terms.

8 A. Go ahead and repeat the question again.

9 Q. (BY MR. PEARSON) Not talking about
10 Cactus in specific, but in general terms when you were
11 at the table with these union representatives, what --
12 who normally took the lead on wage issues for the
13 union? Again not name, but title or position.

14 A. It would be the -- it appeared to me --
15 or it appears to me that it's the president of the
16 local typically, and there is varying degrees of
17 involvement by the international or somebody from the
18 international.

19 Q. On the occasions when you were at the
20 table and there was someone from the local and someone
21 from the international present and wage issues were
22 being discussed, would one of those normally take the
23 lead or did it vary or . . .

24 A. I think it depends upon what -- I think
25 it depends upon how significant the wage issue was.

1 If the settlement parameters were within whatever they
2 determined collectively is acceptable terms, the local
3 was there, there was probably less involvement by the
4 international. On the other hand, if the local's
5 ideas of settlement weren't within those parameters,
6 there was a lot more influence exerted.

7 Q. Can you think of a specific example that
8 sort of illustrates that?

9 A. Sure. The first -- well, the 2000 -- you
10 were referencing Cactus, I can reference other
11 contracts, but the 2001-2005 contract in Cactus, the
12 international representatives were not at the table,
13 but we were getting close to being deadlocked on
14 wages, and I called the international union and told
15 them that I felt that the local's proposed wage
16 settlement was not realistic. At that point the
17 international got more involved.

18 Q. And that obviously got settled?

19 A. Yes, for your country. Greeley,
20 Colorado, the last contract we negotiated in Greeley,
21 Colorado. So that's the operating engineers.

22 Q. Greeley beef?

23 A. 2004 to 2009 is the date that that
24 contract expires. The Local 7 is based out of Denver.
25 The president of the local was the chief spokesperson.

1 We had a staff representative from the international
2 union at the table, but it wasn't until the regional
3 vice-president came to the table that we had a
4 settlement.

5 In other cases, for example like
6 Louisville, Kentucky, I believe that the international
7 knows what's going on at the table, but that local
8 seemed to be a lot more in tune with wage rates, and
9 they didn't need as much oversight from the
10 international. It's really going to depend upon the
11 local, it's going to depend upon what the local's view
12 of wage structures are and what ours are.

13 Take Marshalltown, Iowa. Marshalltown,
14 Iowa, there has always been an international rep sit
15 through the entire negotiations. Worthington,
16 Minnesota, relatively small local, new president, they
17 have always had a national rep take the chief
18 spokesperson's position since I've been involved. So
19 varying degrees.

20 Q. Has it been your observation that the
21 international union has some interest in having some
22 consistency in wage rates among the various Swift
23 processing plants?

24 A. It's been my observation that the
25 international is focused more on all the meat

1 processing settlements, not just Swift to Swift or
2 Tyson to Tyson, but collectively as an industry where
3 these settlements are coming out.

4 Q. Other than -- who are the big players in
5 the meat processing industry besides Swift and Tyson?
6 Are there others that are significant?

7 A. Cargill Meat Solutions, Smithville Foods.
8 And under Smithville there's John Morrell, Farmland
9 Foods. Kind of an umbrella. There are -- let's see,
10 National Beef. Those would be the big ones. Then
11 there's some that are -- they are not as big, but
12 Seaboard Farms, the Austin -- Quality Pork, they have
13 influence on more kind of a regional level, if you
14 will. We all compete globally, but from a contract
15 standpoint maybe more on a regional level.

16 Q. Following up on my last question. From
17 your observations, is the international union for the
18 United Food and Commercial Workers Union -- strike
19 that.

20 Is the international of the United Food
21 and Commercial Workers Union, from your observation,
22 interested in maintaining some consistency in wage
23 rates among the various major beef processing plants
24 in the United States?

25 A. I think that -- yes, they are interested

1 in trying to make sure that there's some consistency
2 so that they don't have, you know, breakaways on their
3 hands. I would say it seems to me to be more focused
4 on the wage settlement than the wage rates.

5 Q. And I'm not sure I appreciate that
6 distinction. Could you explain that to me?

7 A. Yeah. If you look at the industry and
8 how it pays its employees, there's really only three
9 elements or three tiers, start rate, base rate, and
10 then premium pay. The primary focus for most
11 everybody is the base rate. That's the minimum that I
12 can pay somebody after X amount of time.

13 So when you say, you know, the industry
14 wages, that's going to be -- that will be the
15 indicator -- or the key indicator of wages in the
16 industry and then, therefore, in individual plants.
17 But the base wage in some of these facilities can be
18 substantially different from one plant to another one,
19 or one company to another one.

20 This is just my view, it seems to me that
21 the international, once that's occurred, isn't so much
22 focused on that deviation as much as what the future
23 settlements for that location is going to be. So if
24 they have got a plant or facility that's, for whatever
25 reason, substantially behind the rest of the industry,

1 they have not exercised the force of taking that plant
2 out on strike to close that gap as much as it appears
3 to be focused on what the future settlement is. If
4 the settlement is within a range for the industry, it
5 seems like they get contracts.

6 Q. So is it fair to say the method by which
7 the unions attempt to obtain consistency is by
8 negotiating on upcoming collective bargaining
9 agreements versus trying to in the midst of a contract
10 change the pay; is that what you are saying?

11 A. No, that's not what I'm saying.

12 Q. I'm not following.

13 A. I'm not going to change the pay in the
14 midst of the contract.

15 Q. When you say they seemed more focused on
16 future settlements than wages, can you explain that to
17 me again?

18 A. Let me explain it by giving you an
19 example. Seaboard Farms is a contract that is
20 substantially below most of the industry in the pork
21 industry. When I say "below," it's the base rate, yet
22 they have negotiated several contracts and it remains
23 below the industry.

24 So to me, when I look at that and try to
25 rationalize that, I'm the international union, which

1 I'm not, but looking at it and saying, how do you
2 rationalize that? The only way you can rationalize it
3 is by the settlement as they come up for that
4 contract. Are the settlements within the, quote,
5 norms for the industry. Otherwise I don't know how
6 you rationalize that if you're the union.

7 Q. Maybe I don't understand the settlements.
8 I thought settlements simply meant the terms of a new
9 collective bargaining agreement. Is that not what
10 that means?

11 A. When I talk about settlements now, I'm
12 focused about wages because that's where your
13 questions have been.

14 Q. Explain to me what that term means as far
15 as wages. You are talking about settlements.

16 A. The increases to the employees wage
17 rates.

18 Q. As reflected in a new collective
19 bargaining agreement?

20 A. Right.

21 Q. But taking the Seaboard as an example, if
22 they are consistently negotiating new wage settlements
23 and collective bargaining agreements that are still
24 behind the industry, I guess I'm not understanding how
25 that makes sense to you when you are saying you are

1 trying to figure out how it makes sense or how you can
2 rationalize it. I guess I'm not following there.

3 A. I said the only way I can rationalize
4 that if I'm in the union's position, which I'm not,
5 but as an interested observer trying to figure out how
6 does that go on, how do they, the international union,
7 allow that to go on? The only way I can rationalize
8 it is that while they are behind the industry, but the
9 wage settlements they are getting are consistent with
10 the new increases -- maybe that's the difference, is
11 that the new wage increases are consistent or slightly
12 above the industry settlements on new wage increases.

13 Q. So does that mean they are not closing
14 the gap but they are staying about the same behind, is
15 that what you are saying?

16 A. It's going to depend upon the contract
17 that's under water. But, yeah, they are going to
18 consistently be behind.

19 Q. For example, if the average increase is
20 50 cents an hour, if Seaboard is getting a
21 50-cent-an-hour increase, then they accept that even
22 though that still keeps them behind the industry
23 average?

24 A. Again, that's my observation because they
25 get new contracts doing it that way, so somebody is

1 accepting it.

2 Q. When you talked about the different three
3 tiers, you talked about the start rate and the base
4 rate. Explain to me how the start rate and the base
5 rate differ.

6 A. The start rate will be the minimum that
7 somebody comes in right off the street and begins to
8 work at. In most of these labor agreements there's a
9 progression -- a wage progression, so it's already
10 laid out and says you will start at X and you will get
11 a wage increase in these intervals until you reach the
12 base rate. Those intervals can be anywhere from
13 probably as low as -- I think it's 90 days to as long
14 as 18 to 24 months.

15 So it's setting a floor when you first
16 walk in, and then it sets another floor after I've
17 been there X period of time, this is the minimum I can
18 make.

19 Q. And is it the base rate that's typically
20 the one that's focused on most?

21 A. Yes.

22 Q. And once you reach the base rate, that's
23 still a floor? That's still a minimum?

24 A. Yes.

25 Q. And you can get more than that?

1 A. Yes.

2 Q. So if we look -- for example, let's look
3 at Exhibit 7 -- let me back up for a second. Let's
4 tie this into the interrogatory. The interrogatories
5 are Exhibit 1. Interrogatory No. 4 on page 8, the
6 interrogatory was, "For each of the Swift facilities
7 please provide the starting wage for each category of
8 hourly worker by job title for each month from June 1,
9 2006, to June 30, 2007."

10 Then after some objections the answer
11 was, "Responsive information is set forth in
12 Exhibit E," which I put in here. If you'll flip to
13 tab 7, you'll see it's labeled Exhibit E, response to
14 interrogatory No. 4. I want to talk about that for a
15 minute.

16 So is it fair to say that these are the
17 wage rates during the requested time frame for the
18 various Swift facilities and the various positions at
19 those facilities?

20 A. Without reviewing this entire document, I
21 don't know because I didn't prepare it.

22 Q. Assume with me that's what this is.
23 Let's talk a little bit about it. These different
24 brackets, are those job positions, or what does that
25 mean? Like bracket 11, bracket 12?

1 A. I'm sorry, where are you at?

2 Q. Page 1, under the title Job Description,
3 it gives the bracket numbers.

4 A. Okay.

5 Q. Are those just different positions?

6 A. You know, I got to tell you, I don't
7 know, because I don't know how they have this laid
8 out.

9 Q. Let's look down about midway through on
10 this first page, there's a heading for base; do you
11 see that?

12 A. Correct.

13 Q. And then it lists the effective date, the
14 employee grade is 000, then it lists a minimum wage
15 rate of \$11 and a maximum wage rate of 11.80. And
16 that's for the Marshalltown plant, correct, that's
17 what this says?

18 A. Right.

19 Q. I want to talk for a moment -- explain,
20 if you would, this minimum versus maximum wage rate
21 and how that's reflected, if it is, in the collective
22 bargaining agreements?

23 A. I don't know what they are calling -- I
24 don't know how they have set this up on the minimum
25 wage rate and the maximum wage rate. I can tell you

1 what I think it is.

2 Q. Okay.

3 A. The minimum wage rate in this appears to
4 me to be the start rate -- what I would call the start
5 rate because it's \$11 an hour. And at this point in
6 time the effective date, being October 16, 2006, I
7 believe that was the start rate.

8 The maximum wage to me appears to be the
9 base rate. I would not have used that terminology if
10 I put this together, I would have used base rate or
11 wage rate because maximum means something different to
12 me.

13 Q. Okay. Let's find another example to see
14 if this is -- is the one plant in particular that you
15 are more familiar with than the other, or pretty much
16 all of them?

17 A. That's fine.

18 Q. Let's flip to page 3, and about --
19 there's a base rate about 6 or 7 lines down, base rate
20 for Swift FP, Greeley. Those are the same numbers,
21 that's bizarre. Let's go down about two-thirds of the
22 way down, there is the 129, 2007 Grand Island base
23 rate on page 3.

24 A. Correct. I got it.

25 Q. Was that the effective date of the most

1 recent CBA for Grand Island?

2 A. Yeah, I think it is.

3 Q. And you see those rates of 11 -- again,
4 it lists 11.75 and 11.75, that's bizarre. Does that
5 make any sense to you for Grand Island?

6 A. Yes.

7 Q. And can you explain that to me?

8 A. The decision was made -- in almost every
9 one of these collective bargaining agreements, when
10 you negotiate the start rate, it is a minimum -- it's
11 a minimum rate of pay, as I talked before, it's a
12 floor -- but I need to word that differently.

13 We reach agreement with the union that
14 these are the minimums that we'll pay on the start
15 rate and the minimum progression structure, how long
16 it takes me to get to base. But the way we word it in
17 the collective bargaining agreements is so we can
18 increase those, if we so chose, without going to the
19 union and renegotiating it. All we need to do is
20 notify them.

21 Q. So -- go ahead.

22 A. So the reason this makes sense to me is
23 that in October of '06 we took the start rate and
24 matched it with the base rate.

25 Q. For Grand Island, or for all your

1 facilities?

2 A. For Grand Island, for Greeley, for
3 Cactus, for Worthington. And then in Marshalltown --
4 Marshalltown was one contract. I think it was the
5 only one that we didn't have the minimum start rate
6 and minimum progression language, so we actually had
7 to sit down and negotiate with them. We did not
8 increase it in Louisville, Santa Fe Springs, at the
9 lamb plant, or the distribution centers.

10 Q. So make sure I understand, in the
11 collective bargaining agreement there would be a
12 minimum start rate for various positions; is that
13 right?

14 A. And start rate for the plant, period.

15 Q. Okay. It wouldn't be position by
16 position?

17 A. No, not when we're referring to the start
18 rate.

19 Q. What about these minimum progression
20 structures, would that be position by position, or
21 plant-wide?

22 A. Plant-wide.

23 Q. And what about the base rates, would
24 those be --

25 A. Plant-wide, we have some plants where

1 there's a different base rate for first processing or
2 the slaughter side, and second processing or the
3 fabrication side.

4 Q. So I thought I had seen in some different
5 documents that there's some significant differences in
6 wage rates within the plant depending on what a
7 particular worker is doing; isn't that true?

8 A. That's correct.

9 Q. And how, if at all, is that reflected in
10 the collective bargaining agreement?

11 A. By what I call premium pay or grade pay.

12 Q. Okay. So the premium pay is the -- is
13 where you deviate position by position?

14 A. That's correct.

15 Q. And are those also minimums?

16 A. In those cases they are going to be set.
17 It is the rate of pay for that job.

18 Q. So what -- I guess I'm trying to figure
19 out, let's say the Cactus plant, what percentage of
20 jobs are tied into the start and base rates, and what
21 percentage are tied into the premium pay? Is it the
22 vast majority of workers are on the minimum start and
23 base and a small number are on premium pay, or do you
24 have a feel for that?

25 A. Keep in mind that the start is just -- I

1 mean, that's the beginning. I know I'm going to at
2 least get to the base rate irrespective of what job
3 I'm doing is a matter of time and qualification. You
4 know, I would -- this is a guess because I guess I
5 haven't really looked at it this way, but I would say
6 that two-thirds of the jobs, or maybe a little bit
7 more than that, pay some rate above base, so they are
8 paying some grade or some premium.

9 Q. Okay. And those are set, that's not
10 something that there is a progression or that's just a
11 set hourly wage?

12 A. It's a set rate.

13 Q. And it doesn't change based on longevity
14 or how long you're in that position?

15 A. Not in any of our unionized facilities,
16 no.

17 Q. And other than I think you mentioned
18 there was one plant at Marshalltown where you couldn't
19 increase the pay, you had to go back and renegotiate.
20 Was that Marshalltown?

21 A. That's my -- yeah, it was Marshalltown.
22 But I believe that was the only one that we didn't
23 have the minimum start and progression language in, so
24 we actually had to negotiate a different start rate.

25 Q. Which I'm assuming they gladly

1 negotiated?

2 A. I don't know that it was gladly, but they
3 negotiated it.

4 Q. Is there some reason they wouldn't want
5 their employees to get a raise?

6 A. It only applies to the new people and not
7 the people that are currently working there.

8 Q. Let's talk for a couple minutes about how
9 contracts -- how the wages are set at the Hyrum, Utah,
10 facility. Among the processing plants, if I'm not
11 mistaken, that's the only one that's not unionized?

12 A. Of the major processing plants, that's
13 correct.

14 Q. Walk me through in general terms how
15 wages are set at that plant. Obviously there is not a
16 collective bargaining agreement in place, or how does
17 that work?

18 A. As far as going back internally how the
19 process works and so forth just like we did on the
20 others?

21 Q. Sure. That's fine.

22 A. It's primarily the same way as the other
23 plants, even though there is no union there. They
24 have some differences in how they pay people. For
25 example, there, longevity does make a difference on

1 the jobs. They go through an annual -- what we call
2 an annual review process, so we're looking at the wage
3 and benefit structure and policies on an annual basis
4 rather than the collective bargaining agreements being
5 anywhere from three- to five-year terms.

6 Q. So wages in the Hyrum, Utah, plant are
7 set annually?

8 A. Yes.

9 Q. So is it a situation where there is no
10 negotiation, Swift just decides what it's going to
11 pay?

12 A. There is no bargaining representative for
13 the work force, so we have the -- we go through
14 primarily the same process we would go through
15 internally, make a recommendation, then implement the
16 changes, announce the changes for the employees.

17 Q. Have there been any attempts to unionize
18 that plant?

19 A. Not in my history here.

20 Q. So since 2000 there have not been?

21 A. No.

22 Q. Are wage rates at the Hyrum, Utah, plant
23 generally lower than the unionized plants?

24 A. When you factor in their longevity pay
25 and their -- and their rate structure, they are very

1 close to the unionized facilities. If you look only
2 at the base and don't factor that in, which would be a
3 mistake, then they would appear to be further behind.

4 Q. When the internal -- going back to the
5 unionized plants, I guess let's talk about all the
6 plants. During these internal discussions that lead
7 up to a proposal being made to senior management, are
8 there any specific or unique factors at a particular
9 plant that influence your proposal?

10 A. Well, what I was talking about before, to
11 me it's a little bit of a funnel almost, it's going to
12 depend upon which species is up for negotiations, is
13 it the beef plant or pork plant because there are
14 differences by industry.

15 Q. Can I interrupt for a quick second there.
16 Among the processing facilities, I know there's
17 Greeley beef and Greeley lamb, right?

18 A. Correct.

19 Q. Of the others, Cactus, Worthington,
20 Marshalltown, Hyrum, Louisville, and Grand Island, are
21 those all beef, or are some of those pork?

22 A. Some of those are pork.

23 Q. Which of those are pork?

24 A. Marshalltown, Worthington, Louisville.

25 Q. Sorry for interrupting you. You were

1 saying there was a difference between beef and pork?

2 A. Right. So depending upon which species
3 is being reviewed or up for negotiations, we'll look
4 at the wage rates and the wage settlements specific to
5 that industry, so that's how we start. Then we'll
6 look at, is there -- if we look at kind of national
7 settlements, we'll look at what kind of settlements
8 have occurred more regionally.

9 Again, we all compete globally, but
10 regionally is there a competitor within that region.
11 For example, in Worthington, Minnesota, there's two
12 major competitors within -- I think within 45 minutes
13 to an hour of the plant, which means we're competing
14 with them for raw materials, and to some extent for
15 the work force. So we will look and say, okay, what
16 are they paying and have the recent settlements been
17 at those regional kind of competitors.

18 Q. Anything else?

19 A. Let me go back and ask you what your
20 original question was again.

21 Q. Sure. Whether there are any unique or
22 specific factors that you are looking at on a
23 plant-by-plant basis?

24 A. The reason I went down that road is to
25 the extent there is a regional settlement that's

1 occurred in a Sioux Falls Morrell plant or a plant --
2 two plants that we watch in Cactus or the Friona and
3 Plainview Cargill Meat Solutions plants, those can
4 have influence on the contracts that were -- on the
5 contract we're negotiating. So my example, Cactus and
6 Worthington.

7 Every once in a while you'll get into
8 some unique situations with a given facility, its
9 competitiveness and the cost structure of that given
10 facility. But one example that is not in this group
11 here but we had a plant one time in Nampa, Idaho, that
12 is a very small plant, and it was not competitive, we
13 actually ended up doing two one-year contracts there
14 with very little wage increases because of that. So
15 that uniqueness came into play in that particular
16 case.

17 Lamb plant, when we negotiate that
18 contract, it's again a totally separate industry, so
19 we're looking at the cost structure of that industry.

20 Q. As among the beef and pork processing
21 plants, are there any unique factors that come to mind
22 between those plants other than looking at regional
23 settlements?

24 A. Within our --

25 Q. That go into your formulation of your

1 proposals on this collective bargaining agreement.

2 MR. YOULE: Objection, form. Do you mean
3 differences between beef on the one hand and pork on
4 the other, or collectively?

5 MR. PEARSON: Yeah, that was a bad
6 question. Let me try again..

7 Q. (BY MR. PEARSON) Let's back up. You
8 mentioned there is a difference between beef and pork.
9 Could you just explain that? I mean, I know what beef
10 and pork are.

11 A. One has short legs, one has long legs?
12 Well, for example, if you look at our plants, our pork
13 plants pay probably, just when you are looking at the
14 base rate, 60 cents more an hour on average than our
15 beef plants do.

16 Q. Why is that?

17 A. Part of it is the history of those
18 industries because they are different. It's red meat,
19 but they are different industries. They compete
20 differently.

21 Q. Let me give you an example that may be
22 helpful to get my question out better. Let's say as
23 between -- let's say the Grand Island beef facility
24 and the Cactus beef facility, when you are sitting
25 down to set wage rates that you are going to put in

1 your proposal to senior management, are there any
2 unique factors that apply to Cactus or Grand Island
3 that might result in different proposals on the wage
4 rates of those plants?

5 MR. YOULE: You mean other than what he's
6 already explained, or do you want him to go back?

7 MR. PEARSON: I guess whatever his
8 response is to that question.

9 MR. YOULE: Objection to form, asked and
10 answered, but go ahead.

11 A. What comes to my mind is what's happening
12 in that regional market with our competitors. Again,
13 I referenced in Cactus' case the Friona and Plainview
14 plant. There is also a plant in Texas that's a
15 Teamsters plant that's a Tyson plant. Those are all
16 major competitors. We will watch very, very closely
17 what happens there.

18 When we go to Grand Island, we are not
19 looking at Friona and Plainview, we're looking at
20 Lexington, Nebraska, which is a Tyson plant about
21 40 miles down the road. We are looking at Tyson in
22 Dakota City, Nebraska, and we're looking at Cargill
23 Meat Solutions in Skyland Nebraska. So if there is
24 something different and unique in how they are paying
25 people or what their settlements have been or what

1 their wage rates are, that's what we'll be more
2 typical to react to.

3 Q. (BY MR. PEARSON) But because the same
4 union is involved in, again, my example, both Grand
5 Island and Cactus -- well, strike that.

6 These wage rates are public information,
7 is that true, or are they not public?

8 A. They are fairly public. You can get the
9 information.

10 Q. So if you paid \$5 more an hour at Cactus
11 than Grand Island, the people at Grand Island would
12 know about it?

13 A. I don't know whether the people of Grand
14 Island know about it. I think the union would know
15 about it.

16 Q. Right. And you mentioned that you're
17 certainly -- while you do look at the regional
18 competitors, you are competing nationally as well, not
19 just regionally for these workers; is that true?

20 A. When I talk about competing regionally
21 and nationally, I'm talking about from a competitive
22 cost structure standpoint.

23 Q. As far as wage rates for your workers,
24 the level of competition is nationwide or . . .

25 MR. YOULE: Objection to form.

1 Q. (BY MR. PEARSON) I guess what I'm
2 getting at, isn't it true that many of these workers
3 in the beef industry are fairly transient and they
4 will go to where the best jobs and the best pay is?

5 A. There is a certain portion of the
6 employees in the industry that appear to be fairly
7 mobile and will move from area to area. I'm sure
8 wages and benefits have some impact on that.

9 Q. And because of that, it's important for
10 Swift to maintain some consistency in wage rates among
11 its various processing plants, correct?

12 MR. YOULE: Objection to form.

13 Q. (BY MR. PEARSON) You can answer unless
14 he tells you not to.

15 MR. YOULE: Go ahead, yes.

16 A. My answer would be that's not what's
17 going to drive it. You got the wrong driver.

18 Q. (BY MR. PEARSON) Why is that?

19 A. Because it's the cost structure that's
20 going to drive the decision. It's the economics of
21 running the plant that's going to drive the decision.
22 When we sit down and look at the wages and the
23 benefits, what's driving it for the most part isn't
24 can we get or can't we get a work force, it's what the
25 economic impact of giving a 50 cent increase over a 30

1 cent increase and what is that going to do if the
2 economics are the same between us and Tyson, what does
3 that do to us relative to our competition because the
4 margins are so thin in this business.

5 When I sit down with the COO and so forth
6 and discuss this, that's what we cost out. What's
7 this going to cost me today versus where I'm going to
8 be four or five years from now with your proposal.

9 Q. So what is driving the wages is the
10 economic impact overall vis-a-vis your competitors?

11 A. Correct. That's the primary driver. And
12 we would be foolish to say we're not going to give any
13 wage increase. First off, we wouldn't get a contract
14 that way. Secondly, at some point in time we would
15 fall far enough behind it would affect our ability to
16 attract workers.

17 Q. So when you say the primary factor
18 driving wages is the economic impact in relation to
19 your competitors, can you expand on that a little bit?
20 Are you basically saying, well, you know, if we paid
21 this much at this plant it would do this to our
22 profits and, therefore, we would be less competitive
23 or cost structure would go -- I mean, what do you mean
24 by that?

25 A. Next to the raw material, labor is our